No. 1010, 72

In the Supreme Court of the United States

OCTOBER TERM, 1945

THE INTERSTATE COMMERCE COMMISSION,
APPELLANT

vs.

A. L. MECHLING, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF A. L. MECHLING BARGE LINE, INLAND WATERWAYS CORPORATION, THE SECRETARY OF AGRICULTURE, WAR FOOD ADMINISTRATOR, AND THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action 45 C–865

A. L. MECHLING, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF A. L. MECHLING BARGE LINE, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

Civil Action 45 C–866

INLAND WATERWAYS CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Civil Action 45 C–1020

THE SECRETARY OF AGRICULTURE AND WAR FOOD ADMINISTRATOR, PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

JURISDICTIONAL STATEMENT BY DEFENDANT UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

The Interstate Commerce Commission, one of the defendants in the above consolidated causes, respectfully presents the following statement dis-

closing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment or decree in the above-entitled causes sought to be reviewed.

A. Statutory provisions

The statutory provisions believed to sustain the jurisdiction are:

U. S. C. Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C. Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C. Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

U. S. C. Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C. Title 28, Section 345 (Act of March 3, 1891, c. 517, sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, sec. 35, 31 Stat. 85; April 30, 1900, c. 339, sec. 86, 31 Stat. 158; March 3, 1909, c. 269, sec. 1, 35 Stat. 838; March 3, 1911, c. 231, secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, sec. 2, 38 Stat. 804; February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

B. The statute of a State, or the statutes or treaty of the United States, the validity of which is involved

The validity of a statute of a State, or of a statute or treaty of the United States, is not involved.

C. Date of the judgment or decree sought to be reviewed and the date upon which the application for appeal was presented

The decree sought to be reviewed was entered on November 26, 1945. The petition for appeal was presented and allowed on January 23, 1946, together with the assignment of errors.

D. Nature of case and the rulings below

This is an appeal from the decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered November 26, 1945, enjoining in part, the operation and effect of an order of the Interstate Commerce Commission, dated February 13, 1945, in the proceedings known as Investigation & Suspension Docket No. 4718, *Grain Proportionals Ex Barge to Official Territory*, 262 I. C. C. 7. These proceedings had their origin in the filing of proposed tariffs by certain eastern railroads[1] the effect of which would have been to subject grain arriving

[1] Baltimore & Ohio Railroad Company, New York Central Railroad Company, New York, Chicago & St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, and the Chesapeake & Ohio Railway Company.

at Chicago by barge over the Illinois Waterways to the use of existing local rates for outbound rail movement to eastern destinations and to deny to such grain the use of proportional rates applicable to grain arriving at Chicago by lake steamer or rail, which latter were in all cases lower than the existing local rates. Pursuant to its authority under section 15 (7) of the Interstate Commerce Act, the Commission suspended the proposed tariffs and entered upon a hearing of their lawfulness which culminated in its report and order of December 1, 1941, 246 I. C. C. 353, whereby it vacated the order of suspension and discontinued the proceedings. This order was the subject of two complaints filed in this Court, Civil Action, File Nos. 3714 and 3725, respectively. Following consolidation, hearing and submission, this court on April 16, 1942, enjoined and set aside the order of the Commission of December 1, 1941, from which action appeal was taken to the Supreme Court of the United States. That Court by opinion rendered June 14, 1943 (*Interstate Commerce Commission* v. *Inland Waterways Corporation,* 319 U. S. 671), held that the Commission had acted within the power delegated to it by law and reversed the judgment of the court below. In so doing the Supreme Court interpreted the Commission's report and order as not constituting an approval or prescription of the rates under suspension but found that there had been left open, upon a proper record,

the prescription by the Commission of proportional rates on the ex-barge traffic lower than the local rates or joint barge-rail rates lower than the combinations.

Following this decision of the Supreme Court petitions for rehearing were filed with the Commission and on July 13, 1943, the Commission reopened the proceedings for the purpose of receiving evidence on the question of whether or not proportional rates should be prescribed on the traffic in question, or what, if any, joint rates should be prescribed. Thereafter hearing was had at which various parties appeared both in support and against the fixing of proportional rates on the ex-barge traffic higher than those accorded ex-lake and ex-rail traffic.

On February 13, 1945, the Commission issued its report and order (262 I. C. C. 7) the validity of which is here in issue. The Commission concluded that the ex-barge traffic is entitled to proportionals lower than the local rates, but that such proportionals may properly vary from the ex-rail and ex-lake proportionals to the extent warranted by the differences surrounding the all-rail and lake-rail transportation, on the one hand, and the barge-rail transportation on the other. The report then found that the scale of differentials therein specified of ex-barge proportional rates under existing local rail rates would be reasonable and not otherwise unlawful for the interstate transportation of ex-barge grain from Chicago to

the eastern destinations considered. These differentials would result in ex-barge proportionals higher than the ex-rail or ex-lake proportionals but lower than the local rail rates which the proposed tariffs woud have required. The order of the Commission did not direct the respondent rail carriers to file tariffs establishing the ex-barge proportionals specified but merely directed the cancellation of the proposed tariffs which would have applied the local rail rates to this traffic.

In compliance with this order the respondent rail carriers on June 1, 1945, filed tariffs cancelling the proposed tariffs and at the same time proposed to put in effect on October 5, 1945, the ex-barge proportional rates which the Commission had found would not be unreasonable or otherwise unlawful.

On June 1, 1945, complaints against the United States as statutory defendant were filed by A. L. Mechling, trading under the name of Mechling Barge Line (45 C–865) and Inland Waterways Corporation (45 C–866), and on June 27, 1945, by the Secretary of Agriculture and War Food Administrator (45 C–1020), all pursuant to provisions of section 41 (28) and sections 43 to 48, inclusive, of Title 28 U. S. C. The Interstate Commerce Commission was made a defendant in the Inland Waterways Corporation complaint and intervened as defendant in the other two complaints pursuant to sections 212 and 213 of the

Judicial Code as amended. None of the respondent rail carriers was named defendant in any of the complaints, nor did any of them intervene in the proceedings in this court. The United States, through the antitrust division of the Department of Justice filed its several answers to the complaints confessing error as alleged in the several complaints and joining in the prayers for relief. The Interstate Commerce Commission filed answers denying each and every allegation of error and thus issue was joined. By order of the district court the three complaints were consolidated for hearing and disposition.

The complaints centered their attack upon that portion of the Commission's report which approved the establishing of the designated differentials on the rail transportation of ex-barge grain from Chicago to the eastern destinations. The relief sought was an injunction restraining and setting aside the operation and effect of the order insofar as it approved and authorized the establishing of these differentials.

On October 4, 1945, the matter came on for hearing upon application for relief *pendente lite* and on the same day the court entered an order suspending the operation and effect of the order of the Commission of February 13, 1945, for a period of sixty days, insofar as it authorized the imposition of the basis of rail charges therein approved for the transportation of ex-barge grain out of Chicago, Illinois, that would be differen-

tially less favorable to ex-barge grain than the rates presently in effect, restraining the Commission from permitting to become effective any tariffs that had been or might be published in conformity with the order of the Commission, including the tariffs to have become effective October 5, 1945, and enjoining the Commission forthwith to take all steps needful faithfully to observe these restraints including the suspension of said tariff publications.

Acting under compulsion of this order the Commission on October 4, 1945, suspended the operation of the tariffs of the respondent rail carriers which were to have become effective October 5, 1945.

The causes were heard on final hearing on October 16, 1945, before a court of three judges organized pursuant to the provisions of the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 220). After the voluminous record before the Commission, made after extensive hearings, had been offered by plaintiffs and received in evidence, the court announced that it desired to hear from the Commission in support of the order in issue. Thereupon the Commission argued the validity of the order based upon the findings contained in the Commission's report and the assertion of statutory power based thereon. Upon the conclusion of the Commission's presentation, the court orally announced its opinion and judgment that the order of the

Commission was in violation of section 3 (4) of the Interstate Commerce Act and of the National Transportation Policy insofar as it authorized proportional rail rates for the transportation of ex-barge grain from Chicago to eastern destinations differentially higher than those in effect for the transportation of ex-rail and ex-lake grains. Plaintiffs were thereupon directed to submit findings of fact, conclusions of law, and final decree carrying into effect the oral judgment so announced.

On November 26, 1945, the court, without rendering a written opinion, filed findings of fact and conclusions of law, in the form submitted by plaintiffs, and entered its final decree which enjoined the order of February 14, 1945, insofar as it approved or authorized a rate for transporting ex-barge grain east from Chicago that is higher than any rate contemporaneously exacted for the transportation of like ex-rail or ex-lake grain, and restrained the Commission from taking any action, the effect of which would be to sanction or permit to become effective any rail rates for the transportation of ex-barge grain from Chicago to eastern destinations that are in any way predicated upon the authority of said order of February 13, 1945. The decree also remanded the cause to the Commission for further proceedings in conformity with the findings and conclusions of the court.

The questions presented by this appeal are

substantial ones. First of all there is present the question of whether or not the plaintiffs had exhausted their administrative remedies so as to perfect jurisdiction in the district court to entertain these suits. Secondly, it involves the respective powers of the court and the Commission in determining administrative matters of fact where issues of unjust discrimination and undue prejudice are raised. And finally there is involved the extent of the Commission's power and authority in administering the provisions of the Interstate Commerce Act in the light of the national transportation policy to authorize rate adjustments based upon differentiating transportation conditions. The ultimate determination upon the merits of this controversy is likewise important in that it will affect large interests over a broad territory and the movement of large volumes of grain and grain products.

E: Cases sustaining the Supreme Court's jurisdiction of the appeal

Interstate Commerce Commission v. *Oregon-Washington R. & Nav. Co.*, 288 U. S. 14;

United States v. *Baltimore & Ohio Railroad Co.*, 293 U. S. 454;

United States v. *Lowden*, 308 U. S. 225;

Hudson & Manhattan Railroad Co. v. *United States*, 313 U. S. 68; and

Interstate Commerce Commission v. *Inland Waterways Corporation*, 319 U. S. 671.

F. Decree and findings of fact and conclusions of law of the District Court

Appended to this statement is a copy of the findings of fact and conclusions of law of the District Court and a copy of the decree of said court sought to be reviewed.

We, therefore, respectfully submit that the Supreme Court has jurisdiction of the appeal.

Dated, January 23, 1946.

Daniel W. Knowlton,
DANIEL W. KNOWLTON,
Chief Counsel.

Daniel H. Kunkel,
DANIEL H. KUNKEL,
Attorneys for Interstate Commerce Commission.

U. S. GOVERNMENT PRINTING OFFICE: 1946

APPENDIX

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

A. L. MECHLING, doing business under the trade name and style of A. L. MECHLING BARGE LINE,
Plaintiff,
vs.
UNITED STATES OF AMERICA,
Defendant.
INTERSTATE COMMERCE COMMISSION,
Intervening Defendant.
} Civil Action File No. 45 C 865

INLAND WATERWAYS CORPORATION,
Plaintiff,
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
Defendants.
} Civil Action File No. 45 C 806

THE SECRETARY OF AGRICULTURE OF THE UNITED STATES and the WAR FOOD ADMINISTRATOR,
Plaintiffs,
vs.
UNITED STATES OF AMERICA,
Defendant.
INTERSTATE COMMERCE COMMISSION,
Intervening Defendant.
} Civil Action File No. 45 C 1020

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause coming on to be heard and the court having heard arguments of counsel and being advised in the premises now makes the following

FINDINGS OF FACT

(1) A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, plaintiff in Civil Action No. 45 C 865, hereinafter called "Mechling," is a common carrier by water subject to Part III of the Interstate Commerce Act operating a barge line on the Illinois River and Waterway and the Mississippi River, by means of which he transports grain in interstate commerce from various ports on said waters to Chicago, Illinois, for reshipment at Chicago to interstate and foreign destinations located easterly therefrom.[1]

(2) Inland Waterways Corporation, operating Federal Barge Lines, plaintiff in Civil Action No. 45 C 866, hereinafter referred to as "Federal," is a common carrier by water subject to Part III of the Interstate Commerce Act operating a barge line on the Illinois River and Waterway and Mississippi and Missouri rivers, by means of which it transports grain in interstate commerce from various ports on said waters to Chicago for reshipment at Chicago to interstate and foreign destinations located easterly therefrom.

(3) The Secretary of Agriculture of the United States, one of the plaintiffs in Civil Action No. 45 C 1020, is a duly appointed cabinet officer of the President of the United States of America in charge of the Department of Agriculture, and is authorized to make complaints to the Interstate Commerce Commission, hereinafter referred to as the Commission, with respect to rates, charges, tariffs, and practices relating to the transportation of farm products and to prosecute the same

[1] Mechling has been certificated as such by the Interstate Commerce Commission in collateral proceedings.

before the Commission and to appear as a party in original and appellate judicial proceedings involving the Commission's determination. The War Food Administrator, the other plaintiff in Civil Action No. 45 C 1020, is a duly appointed officer of the United States similarly authorized. Said War Food Administrator is also authorized to formulate and carry out a program designed to furnish a supply of food adequate to meet military, civilian, and foreign requirements, both for human and animal consumption and for industrial uses, and to take all appropriate steps to insure the efficient and proper disposition of the available supply of food.

(4) Grain is also transported to Chicago, Illinois, by rail[2] and by lake steamer for reshipment to interstate and foreign destinations lying easterly of Chicago.

(5) The Western Railroads so transporting grain to Chicago serve, among many others, most of the origins served by the barge lines in this grain traffic to Chicago and compete with the barge lines for the grain brought to Chicago.

(6) The lake steamers bring grain to Chicago from various ports on the Great Lakes, of which Duluth, Minnesota, is the most important in respect to domestic grain. At times, said lake steamers also bring substantial quantities of foreign grain to Chicago, both from Canada and from other continents, said latter grain being imported via the St. Lawrence Waterway.

---

[2] The Western Railroads, whose lines end at Chicago, include the Alton Railroad, Atchison, Topeka & Santa Fe Railroad, Chicago, Burlington & Quincy Railroad, Chicago & North Western Railroad, Chicago, Great Western Railroad, Chicago, Milwaukee, St. Paul & Pacific Railroad, Chicago, Rock Island & Pacific Railroad, Illinois Central Railroad, New York Central Railroad and Wabash Railroad.

(7) The grain so brought to Chicago by rail, lake steamers, and barge is transported therefrom to interstate and foreign destinations lying easterly thereof by the Eastern Railroads[3] which were the respondents and defendants in the proceeding before the Commission known as *Grain Proportionals, Ex-Barge to Official Territory, I. & S. Docket 4718*, in which was issued the order sought to be enjoined in this cause. The incoming lines of the Western Railroads, and the plaintiff barge lines, are connecting lines of carriers, as defined by Section 3(4) of Part I of the Interstate Commerce Act, of the Eastern Railroads via which said grain is shipped out of Chicago.

(8) Typically, this grain is temporarily stored on arrival at Chicago in elevators from which it is delivered into the cars of the Eastern Railroads for out-movement to the east. The movement of grain from the west through the Chicago elevators to the east is one of the conspicuous national streams of interstate commerce. Chicago is the greatest grain reshipping point in the world.[4]

---

[3] The Eastern Railroads include, for example, the Baltimore & Ohio Railroad Company, Erie Railroad, New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, and the Chesapeake and Ohio Railway Company.

[4] Appendices to the reports of the Commission in the proceeding in which was entered the order sought to be enjoined in this cause show by years the receipts and shipments of grain from Chicago according to species and mode of transportation. (246 I.C.C. 353, *383*; 262 I.C.C. 7, *41*) For the period from 1933, when movement of grain by barge to Chicago was resumed upon completion of the Illinois Waterway, through the first ten months of 1943, the totals of such yearly figures are as follows:

GRAIN RECEIVED AT AND SHIPPED FROM CHICAGO

Grain Receipts (in thousands of bushels)

	By Rail	By Barge	By Lake	Total
Corn	773,897	85,191	23,170	882,258
Wheat	251,419	12,024	18,063	281,506
Oats	210,616	2,470	8,237	221,323
Soybeans	97,500	2,948	120	100,568
Total grain	1,333,432	102,633	49,590	1,485,655

Grain Shipments (in thousands of bushels)

Corn	288,100	200	272,077	560,377
Wheat	158,402	888	83,376	242,666
Oats	177,574	368	17,263	195,205
Soybeans	22,200	...	17,838	40,038
Total grain	646,276	1,456	390,554	1,038,286

The tariffs and the trade treat soybeans as grain, and as used herein grain includes soybeans. Other kinds of grain are received at Chicago besides that shown in these figures.

The grain received at Chicago by lake inbound comes principally from Duluth, Minnesota, although during the period covered by the above table substantial quantities of foreign grain were also received via lake at Chicago. The lake shipments from Chicago outbound go primarily to Buffalo, New York, for reshipment by rail therefrom to destinations easterly thereof.

(9) Grain moving to and stored at Chicago in this stream of commerce is sold on the basis of delivered prices to Chicago dealers. The cost of the inbound transportation (as represented by freight rates and other incidental charges) is borne by the producer or shipper of inbound grain. The net price received by such producer or shipper varies inversely with the amount of the inbound transportation cost so that the benefit of any lowered cost of inbound transportation accrues directly to the producer and inbound shipper. The deliv-

ered prices so paid by Chicago dealers are uniform, regardless of the mode, cost or length of inbound transportation, so long as the grain purchased is treated on a parity with all other grain in respect to transportation charges assessed for outbound movements.

(10) All grain of like kind and grade comes to a common market value at Chicago, regardless of the cost, mode or length of inbound transportation. Such grain is sold by the Chicago dealers delivered at Eastern Destinations at the price represented by such Chicago market value, plus the cost of transporting such grain to said Eastern Destinations. The Chicago dealers sell the grain so purchased from the west at delivered prices based on such Eastern Destinations as Philadelphia, Pa., New York City, N. Y., and Boston, Mass. As a consequence, the reshipping rates are borne by the Chicago dealers. Such Chicago dealers are not able to bear or absorb greater outbound reshipping charges on grain brought to Chicago by a particular mode of transportation (such as those prescribed by the Commission in its order herein complained of), than they bear or absorb on grain brought to Chicago by other modes of transportation unless such grain has been purchased by them at a price reflecting a discount of similar amount to the amount by which the reshipping rate on the particular grain is greater than on other grain.

(11) The principal escape of all grain from Chicago to the east is via rail.[5] That is the only escape during a period of five months in the winter when navigation on the Great Lakes is closed. That is also the only escape at any time of year for very substantial volumes of grain sold to processors intermediate between Chi-

[5] See footnote 4, *supra*.

cago and Buffalo. In the case of rail-arrived grain, a substantial volume is disposed of by means of local sales at Chicago to processors there located. There is little, if any, sale at Chicago of the barge-arrived grain for local consumption or use, which fact is due to the charges made by railroads for switching the barge-arrived grain from waterfront elevators in Chicago to local grain processors.[6] Grain cannot come to Chicago by barge in substantial volume unless it can find escape to the east.[7]

(12) By far, the most important destinations for this grain east of Chicago are in New England and Eastern Trunk-Line territories, which include all territory east of a line drawn northward and southward through Pittsburgh, Pa., and Buffalo, N. Y., north of the Potomac River. For convenience, this territory is collectively referred to herein as "Eastern Territory" and destinations therein are collectively referred to as "Eastern Destinations." While some of this grain initially moves from Chicago to intermediate destinations west of said Buffalo-Pittsburgh line, for convenience called "Central Territory," it is nevertheless sold on the basis of delivered prices at destinations east thereof because it can be and is sent on from the intermediate destinations under transit to destinations in Eastern Territory, and the whole transportation movement east from Chicago paid for on the basis of the rate applicable to the movement from Chicago to final destination in East-

---

[6] "At Chicago, the elevators are generally served by both rail and water, but local processors there can obtain rail delivery of barge grain only by the payment of a [rail] switching charge ranging from 3.25 to 4.5 cents per 100 pounds." 262 I.C.C. 7, 24.

[7] "Barge-rail grain is marketed but not processed at Chicago." 262 I.C.C. 7, 22.

ern Territory.[8] That rate is the only rate east from Chicago which then affects the transaction.

(13) Presently, and for many years, this grain arriving in Chicago by rail, lake, and barge has been transported by the Eastern Railroads in carloads from Chicago to all Eastern Destinations at the same basis of reshipping charges, which basis of charges is illustrated by the charge of 26 cents per hundred pounds from Chicago to New York.[9] These charges are called in the last report of the Interstate Commerce Commission (262 I.C.C. 7) "proportionals or specifics." Whatever they are called, and in whatever form they are published and exacted, they are the charge demanded and received by the Eastern Railroads for their service in transporting east from Chicago grain which has had an antecedent haul by rail, lake steamer, or barge. They have been made without reference to the length of inbound haul by rail, barge, or lake. A descriptive name (occurring in some rail tariffs) is "reshipping" rates or charges, and they will be so called herein.[10]

---

[8] "In this proceeding, the rates to trunk-line and New England territories are by far the more important, as marketers and processors in central territory can and do transit under such rates." 262 I.C.C. 7, *15*.

[9] Rates are herein stated, as in the rail tariffs and the Commission's report, in cents per hundred pounds.

[10] There is but one level of reshipping rates from Chicago to Eastern Destinations (which are by far the more important here) and it is applicable from Chicago to all Eastern Destinations, whether the grain arrived in Chicago by rail, lake, or barge—and regardless of the origin of the grain west of Chicago. To the less important Central Territory destinations there are three levels of ex-rail reshipping rates dependent on the origin of the grain, each level applying to grain received from a particular origin territory, regardless of the length of the inbound haul. As to grain received from two of such origin territories, the ex-rail and ex-barge reshipping rates east from

(14) At the same times, the Eastern Railroads have published so-called "local" rates for transporting grain east from Chicago, considerably higher than the reshipping basis, and applicable on grain that has had no antecedent transportation to Chicago but originating in the Chicago switching district, called "local" grain. The local rate level is uniformly higher to all Eastern Destinations by 8.5 cents per hundred pounds, than the

---

Chicago are identical. That is to say, there is an identity of rail reshipping charges out of Chicago on grain, regardless of whether it arrived in Chicago by rail, lake, or barge, as to all grain originating in the northwest (Northwest Territory—which includes all origins in North Dakota, South Dakota, Minnesota, Wisconsin, the Upper Peninsula of Michigan, Montana, Wyoming, Idaho, Oregon, Washington, and certain Canadian provinces). To these Central Territory destinations there is also the same identity of rail reshipping charges out of Chicago on grain, regardless of mode of inbound transportation, as to all grain originating west of the Mississippi (Trans-Mississippi Territory, which includes all origins west of the Mississippi other than Northwest Territory). As to grain originating in Illinois, the rail reshipping charges east from Chicago on rail-arrived grain (to Central Territory) differ from the other two reshipping levels just mentioned; but said reshipping level to Central Destinations is not applicable to barge-arrived grain from Illinois. As to such barge-arrived grain, the reshipping rates are the same as the reshipping rates on the ex-lake grain which in turn are the same as the reshipping rates on ex-rail grain from the Northwest. Those rates are in a few cases lower, but as a general level as high (and, to most such Central Territory destinations, higher) than the rail reshipping charges east from Chicago on the grain arriving there by rail from Illinois origins. These three different levels of reshipping charges from Chicago (to Central Territory) are not an adjustment of these outbound rates from Chicago which vary with the length of the inbound haul. Thereunder, grain from Iowa, just across the Mississippi River, takes the same reshipping rate out of Chicago to Central Territory destinations as grain from the Rocky Mountain region; and grain from Milwaukee, Wis., takes the same reshipping rate from Chicago to Central Territory destinations as grain from Canada.

reshipping rate level. The local rate level is illustrated by the local rate from Chicago to New York of 34.5 cents.[11]

(15) By a previous order, 248 I.C.C. 307 (entered on evidence taken before the Transportation Act of 1940 became effective), the Interstate Commerce Commission approved the Eastern Railroads putting into effect a proposal to cancel the application of the reshipping basis of rail charges as to all grain arrived in Chicago via the inland waterway by barge (called "ex-barge" grain) without changing the reshipping basis of rail charges on grain arrived in Chicago by rail or by lake (called, respectively, "ex-rail" and "ex-lake" grain), and leaving no rail rate applicable from Chicago to Eastern Destinations on ex-barge grain but the local rates, uniformly higher than the reshipping charges by 8.5 cents to all Eastern Destinations.[12] At the time the evidence was taken on which said order was entered, this transportation of grain to Chicago via barge was not subject to the Interstate Commerce Act and the Commission had held that said Act did not prohibit discrimination in rates and charges by railroads against a connecting unregulated water line, since at that time the said Act did not apply to port-to-port transportation by barge lines, and the prohibited discrimination in rates and charges by railroads against connecting lines embraced only discrimination against a connecting line

---

[11] They are also applicable, for example, on grain that has lost its reshipping privilege, as by lying too long a time in Chicago without reshipment, and to grain arriving in Chicago via truck.

[12] To destinations in Central Territory the local rates exceeded the reshipping rate levels by varying amounts ranging from a few cents to 7.5 cents.

subject to Part I of the Interstate Commerce Act.[13] That order was contested in this Court and the Supreme Court of the United States, the latter court sustaining the Commission's order. The Eastern Railroads did not avail themselves of the said permission to make their said proposal effective.[14] After said proceedings in this Court and in the Supreme Court of the United States,[14a]

---

[13] 246 I.C.C. 353, 363 and cases cited.

[14] "Since the Commission refused to approve or prescribe them, they stand only as carrier-made rates, which, under the Commission's decision leaves them open to possible recovery of reparations." *Interstate Commerce Commission* v. *Inland Waterways Corp.*, 319 U. S. 671.

[14a] The history of the proceedings in which was entered the order sought to be enjoined in this cause may be summarized as follows: The proposal of the Eastern Lines to make the reshipping basis from Chicago to the east inapplicable to ex-barge grain arriving at Chicago over the Illinois Waterways was published in tariffs filed with the Commission to become effective October 15, 1939. Various shipping interests and Federal filed protests against that proposal alleging that, if made effective, it would violate Sections 1, 2, and 3(1) of the Interstate Commerce Act. Thereupon, by order of October 14, 1939, said proposal was suspended by the Commission and an investigation instituted into the lawfulness thereof in a proceeding known as *Grain Proportionals, Ex-Barge to Official Territory, I. & S. Docket No. 4718.* Hearings in that investigation were complete in January 1940. On July 31, 1941, the Commission, Division 2, issued its report and order (246 I.C.C. 353) and found that the proposal had not been shown to be unlawful, that the suspension order should be vacated, and the proceeding discontinued as of August 30, 1941. Thereafter, upon petition of the plaintiffs and others, the Commission granted reconsideration (but denied rehearing) in said case, and on December 1, 1941, issued its report and order on reconsideration (248 I.C.C. 307) in which it stated that the proposed schedules had been shown to be just and reasonable and had not been shown to be otherwise unlawful, that the suspension order should be vacated, and the proceeding discontinued as of December 22, 1941. Thereafter, various

the Commission on petition of interested parties reopened the case by order set forth in the margin[15] and on February 13, 1945, entered a further

---

parties and interests, including the plaintiffs in this cause and others, as plaintiffs or intervening plaintiffs, filed proceedings in this Court seeking to enjoin the said order of the Commission of December 1, 1941. This Court issued the injunction as prayed. On appeal, the Supreme Court of the United States reversed this Court and held that the order entered by the Commission in the proceeding before it involved no approval of proposed schedules and that the dismissal of the proceedings was within its authority under the circumstances of the case.

[15] The order of the Commission reopening the case before it for further hearing reads:

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION held at its office in Washington, D. C., on the 13th day of July, A. D., 1943.

I. & S. No. 4718.

GRAIN PROPORTIONALS, EX-BARGE TO OFFICIAL TERRITORY.

It appearing, That in the report of the Commission on reconsideration in the above-entitled proceeding, 248 I.C.C. 307, the Commission said that "in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-rail rates lower than the combinations."

It further appearing, That motions requesting leave to file petitions for rehearing and for an order fixing specific reshipping rates on ex-barge grain, together with such petitions, have been filed by Cargill, Incorporated; Continental Grain Company, Norris Grain Company; Rosenbaum Brothers; Santa Fe Elevator Corporation; and A. L. Mechling, doing business as A. L. Mechling Barge Line; and that said petitioners request rehearing for the purpose of presenting evidence which will permit the Commission to prescribe and fix reshipping rates on ex-barge grain predicated on the particular circumstances and conditions which surround its transportation;

order.[16] Therein and thereby the Commission disapproved and ordered canceled the said rate proposal. No one complains of that action. But by the same order

---

It further appearing, That the said petitions in effect are complaints which bring in issue the lawfulness of rates applicable on the through movement of the traffic considered in the instant proceeding; and that the record therein may be of assistance in determination of the issues presented by said petitions.

And it further appearing, That the said petitions and replies thereto have been considered in the light of the record herein and the opinion of the Supreme Court of the United States in *Interstate Commerce Commission, et al.* v. *Inland Waterways Corporation, et al.*, decided June 14, 1943.

It is ordered, That this proceeding be, and it is hereby, reopened for further hearing for the purpose of receiving evidence (1) on the questions of whether or not reshipping or proportional rates should be prescribed for interstate transportation by railroad of ex-barge grain, in carloads, from Chicago, Ill., and other related points of origin embraced in the instant proceeding to eastern destinations considered therein, and if so, to determine what would be reasonable and otherwise lawful proportional or reshipping rates for application on such traffic, and (2) to determine what, if any, reasonable and otherwise lawful joint rates for the interstate transportation of grain, in carloads, from points of origin served by said A. L. Mechling, doing business as A. L. Mechling Barge Line, to said eastern destinations, shall be prescribed.

And it is further ordered, That this proceeding be, and it is hereby assigned for further hearing on August 16, 1943, at 9:30 o'clock, a. m., at the Hotel Morrison, Chicago, Ill., before Examiner Fuller.

By the Commission:

(SEAL) W. P. BARTEL,
Secretary.

[16] It was stipulated that this order is as reproduced at pages 15 and following of the complaint of A. L. Mechling herein. The "report" (but not the order, which makes the said report, and prior reports of July 31 and December 1, 1941, a part of the order) is reported in 262 I.C.C. 7 and following.

the Commission prescribed a maximum basis of reshipping charges on all ex-barge grain from Chicago to destinations lying to the east thereof, that is higher than the basis of reshipping charges to be continued on ex-rail and ex-lake grain.[17] To all Eastern Destinations

[17] The Commission made its findings a part of its order and found (emphasis supplied):

"2. We further find that reasonable and otherwise lawful proportional rates for the interstate transportation by rail of ex-barge grain, in carloads, from Chicago, Ill., to the Eastern destinations considered herein, under sections 1, 2, 3(1), 3(4), 6(11)(b), and 15a(2) of the Interstate Commerce Act, administered with a view to carrying out the national transportation policy, will be those made differentially under the local rail rates which are or may be hereafter concurrently maintained from Chicago, as set forth below, with the customary differentials on the products and export traffic, and which are no less favorable to the ex-barge traffic, **and no more favorable to the ex-rail and ex-lake traffic than is represented by the relation between such prescribed ex-barge proportionals, on the one hand, and the present ex-rail and ex-lake proportionals or specifics, on the other.**

"Where local rail rate on grain is:	Differential, ex-barge under local rail rates shall be.
Cents	Cents
13-14	1
15-22	2
23-24	3
25-26	4
27-28	5
28.5 and over	5.5"

Said "prescribed ex-barge proportionals" (so prescribed by the Commission in terms of the higher local rates but in relation to the existing ex-rail and ex-lake reshipping charges) are uniformly 3 cents higher from Chicago to Eastern Destinations than what we have called the reshipping charges, which the Commission here calls "the present *ex-rail* and *ex-lake* proportionals or specifics," and which are, also, the present *ex-barge* reshipping rates.

the prescribed reshipping rates on ex-barge grain are uniformly three cents higher than the reshipping basis on all ex-rail and ex-lake grain. To Central Territory destinations, except in a relatively few instances, the prescribed reshipping rates on ex-barge grain are higher than the reshipping basis on ex-rail grain from the same origin, and higher than the reshipping basis on ex-lake grain from all origins.

(16) The Commission found nothing requiring it to order a change in the present equal treatment of ex-rail, ex-lake, and ex-barge grain in respect of the rail reshipping charges to Eastern Destinations. It did not require the Eastern Railroads to put into effect at any particular time the said 3 cent penalty basis of rail charges that it approved against the ex-barge grain in favor of ex-rail and ex-lake grain.[17a] But the Commission found that said penalty rate relation on ex-barge grain was reasonable and otherwise lawful and made such finding and prescribed rate basis a part of its order.[18] By said order the Commission authorized the Eastern Railroads to make said rate penalty effective, at their option and pleasure. Thereafter the Eastern Railroads on June 2, 1945, filed tariffs putting into effect the said prescribed penalty rate basis on ex-barge grain for the full amount of said 3 cent penalty, to become effective October 5, 1945, which tariffs recite on the face that they are "Issued in conformity with findings

[17a] "As the proposed schedules have not become effective because of the voluntary postponement by respondents of the effective date thereof, no order requiring establishment of the rates herein found lawful appears necessary at this time. An order will be entered requiring the cancelation of the proposed schedules, without prejudice to the filing of new schedules in conformity with the findings herein." (262 I.C.C. 7, *33*).

[18] Complaint of Mechling, pages 53, 72.

of the Interstate Commerce Commission in I. & S. Docket No. 4718 decided February 13, 1945," (which is the said order herein complained of) whereby, pursuant to said order, the reshipping rates from Chicago to Eastern Destinations will be increased by 3 cents on ex-barge grain, while the reshipping charges remain unchanged on ex-rail and ex-lake grain.[19]

(17) Consequences of the Commission's order are as follows:

(a) On grain, of like kind (including grain coming from identical shipping points west of Chicago that originate both ex-barge and ex-rail grain, and receiving the same terminal and transit service at and east of Chicago available to all ex-rail, ex-lake and ex-barge grain under the tariffs of the Eastern Railroads) said prescribed higher charge will be made for transporting the same from Chicago to Eastern Destinations if such grain arrived in Chicago by barge, but only the lower established reshipping charge will be made if it arrived in Chicago from the same origin by rail.

(b) On grain of any kind coming by rail or lake from any origin, the same established reshipping charge will be made for transporting the same from Chicago to Eastern Destinations, regardless of whether it is ex-lake from Duluth, or ex-rail from within a few miles of Chicago, and regardless of any other factual disparity between such ex-rail and ex-lake grain.

(c) All ex-rail grain, wherever it comes from, and however short the inbound haul, will be transported to Eastern Destinations for three cents less than any ex-barge grain whatever.[20]

---

[19] To destinations in Central Territory the changes in ex-barge rates shown in said tariffs vary in amount. They need not be stated in detail since the difference between the change in the rate basis to Central Territory and the change to Eastern Territory is one of degree only.

[20] Similar disadvantages in varying amounts, is imposed on ex-barge grain to destinations in Central Territory.

(18) The increase so prescribed in the reshipping charges on ex-barge grain relative to the reshipping charges east from Chicago on ex-rail and ex-lake grain would substantially lessen the barge-rail traffic via Chicago, and substantially decrease the volume of grain moving by barge to Chicago. The pertinent facts are as follows:

(a) Shippers of grain to Chicago from origins served by both rail and barge transportation to Chicago will have less incentive to ship grain to Chicago by barge, because when it comes to Chicago by barge, the reshipment cost east from Chicago to the same destination will be more than if it came to Chicago by rail.

(b) The net price to the Illinois farmer selling his grain for transportation by barge to the Chicago market is determined by the Chicago price, less the barge rate and the applicable costs and margins peculiar to the barge traffic.[21] One such cost deducted from the Chicago market price in order to arrive at the farmer's net price, is the cost of trucking the grain to the river. The Commission finds: "Where the deductions [from the Chicago price] are less on the barge than on the rail traffic, the net price to the farmer is correspondingly greater, the difference diminishing as distance from the waterway increases until it disappears altogether." (262 I.C.C. 7, *23*) The diminishing difference is due to the increase in the cost of getting the grain to the river as distance from the river increases.[22]

[21] The ... sion correctly so finds. 262 I.C.C. 7, *22-23*.

[22] The Commis... port (262 I.C.C. 7, *39-40*, Tables IV and V in Appendix ... the rates via rail and via barge

It finds further: "The primary interest of the Illinois farmer having access to the Waterway is in the greater net price above referred to. The barge lines and the Waterway elevator operators and dealers are primarily concerned with the vol-

---

from some barge origins to Chicago, from which may be computed the differences in such inbound rates as follows:

Origin	Inbound Rates		Difference
	Via rail	Via barge	
ILLINOIS:			
Morris	9.5	2.0	7.5
Seneca	9.5	2.25	7.25
Ottawa	10.0	2.5	7.5
LaSalle	12.0	2.75	9.25
Henry	12.0	3.5	8.5
Lacon	12.0	3.5	8.5
Chillicothe	12.0	3.5	8.5
Peoria	12.0	4.0	8.0
Havana	12.0	4.25	7.75
Naples	13.0	5.0	8.0
MISSOURI:			
Kansas City	16.0	9.5	6.5

Such rate differences, however, do not measure the commercial saving from barge transportation as against rail transportation.

As to rail-arrived grain the Commission finds:

"The net price to the farmer on grain shipped to the Chicago market [by rail] is usually determined by deducting the in-bound truck cost, rail rate, and the country elevator margin from the Chicago price." (262 I.C.C. 7, *16*)

"So far as the rail carriers are concerned the grain originates at numerous so-called country grain elevators located throughout the origin territory requiring an inbound truck haul from the farms ranging from only a few yards to about 10 miles, with a truck charge or cost ranging from 0.9 to 1.8 cents. The all-rail traffic requires only one intermediary between the farmer and the dealer at the primary market or gateway, namely, the country

ume of traffic moving through their facilities."[23] The farmers are also interested in their cooperative elevator facilities on the rivers, which will be depreciated by decreased volume of barge traffic. (c) The Chicago grain dealer must absorb, or pass on to his eastern customer, the cost of transporting the grain east from Chicago; such transportation cost will be higher by 3 cents a hundred pounds to

---

elevator operator, whose average margin is about 4.4 cents." (I.C.C. 7, *16*)

As to barge arrived grain, the Commission finds:

"The net price to the Illinois farmer selling his grain for transportation by barge to the Chicago market is determined by the Chicago price, less the barge rate and the applicable costs and margins peculiar to the barge traffic." (262 I.C.C. 7, *23*)

The trucking cost on the great preponderance of barge-grain traffic to the river ranges from 0.9 cents to 5.4 cents depending upon trucking distance. (262 I.C.C. 7, *42*)

"A trimming expense of 0.7 cent per 100 pounds is incurred in connection with the barge-rail grain. • • • The margin for these elevators at the Illinois barge origins averages about 2.68 cents. • • • Although the barge-grain from the Illinois origins does not move through the country rail elevators, it is generally purchased through the operators thereof, who are allowed the same margin as on the rail grain, namely, 4.4 cents." (262 I.C.C. 7, *22-23*)

"The elevator charges and dealer's margin at Chicago are the same as on transit rail grain, namely, 1.6 and 2.25 cents, respectively." (262 I.C.C. 7, *23*)

These items make the commercial saving resulting from the use of barge transportation rather than rail transportation less than the difference between inbound barge and rail rates which are stated above in this note.

"Where the deductions are less on the barge than on the rail traffic, the net price to the farmer is correspondingly greater, the difference diminishing as distance from the Waterway increases until finally it disappears altogether." (262 I.C.C. 7, *23*)

[23] 262 I.C.C. 7, *24*.

all Eastern Destinations when the grain is transported east by rail; aside from abnormalities arising from wartime conditions, which have occasionally created the sellers' market referred to by the Commission, under the Commission's prescribed penalty rate thereon ex-barge grain in the hands of a dealer on the Chicago market will be worth 3 cents less for reshipment by rail to Eastern Destinations than ex-rail or ex-lake grain.

(d) The Commission found, as to discount in prices paid for barge-arrived grain on the Chicago market resulting from the reshipping rates thereon prescribed by it, that there is "no reason" why such discount should be as great as the rate increases resulting from such prescribed rates. Assuming that finding of the Commission were supported by the record, viz., that such discount of ex-barge grain were 2½ cents, or 2 cents, it affords no rational basis for the imposition of said 3 cent rate penalty on all ex-barge grain from Chicago to Eastern Destinations. Insofar as said finding of the Commission refers to grain for reshipment under normal conditions by rail to destinations east of Chicago there is compelling reason (as is also disclosed by the findings in the reports of the Commission that price parity on ex-rail, ex-barge and ex-lake grain is due to reshipping rate parity[23a]) why such discount on ex-barge grain should at least closely approximate said prescribed increases in the reshipping rates thereon, and no substantial reason to doubt that result. Ex-barge grain will be discounted on the Chicago market, as a result of said penalty rates on ex-barge grain.

(e) Succinctly restated, the discount in the Chicago price on ex-barge grain resulting from the incresed rail charge for moving it east, will decrease the net price to the farmer who brings his grain to the river, which shrinks the farm area adjacent to the river deriving any benefit from the low barge rates to Chicago, diminishes the advantage in the narrowed area still deriving any advantage from the

---

[23a] 262 I.C.C. 7, 17, 18, 21.

low barge rates, and correspondingly shrinks the barge tonnage into Chicago.

(f) Some grain can and does find escape from Chicago to the east over the Great Lakes.[24] The lake escape for grain from Chicago is not available at all during about five months of every year, when lake navigation is closed by weather and ice conditions on the lakes, and especially the freezing of the Straits of Mackinac through which grain via lake from Chicago must pass. There are annually peak movements of grain to Chicago from origins served by barge at times of year when lake navigation is closed. A large part of the grain moving east from Chicago by rail is for transit intermediate to Buffalo, N. Y. at points that cannot get such service by lake.[25]

(g) When grain inbound by barge is not merchandized at Chicago, but is shipped via barge-rail routes through Chicago for the account of a processor to the east thereof (as for example, wheat from Kansas City to the Montana Flour Mills at Cleveland, Ohio), there is an initial saving in the inbound rates by barge of 6.5 cents (16 less 9.5), which same difference would be reflected at ultimate Eastern Destination if ex-barge grain is continued on a reshipping rate level parity with ex-rail grain from Kansas City. Presently, that saving is narrowed by an additional expense of 3.25 cents at Chicago for trimming, weighing, elevation and inspection of the barge-arrived grain (262 I.C.C. 7, 23, *24*) similar items not being encountered in connection with direct shipments of all-rail grain. Additionally, if the barge shipments from Kansas City came from an elevator thereat, other than the one elevator located on the river bank, additional switching charges and a transfer charge from car to barge must be paid. (262 I.C.C. 7, 23, *24*) These latter charges are the equivalent of 2.64 cents per hundred pounds on a 100,000 pound car. When a 3-cent

[24] See finding number 8.

[25] See finding number 12.

penalty is imposed in connection with the ex-barge reshipping rate, the sum of that penalty plus 3.25 plus 2.64 equal 8.89 cents, which exceeds by 2.39 cents the inbound rate saving from the use of barge service, so as to make the use of barge-rail service commercially impossible under the ex-barge reshipping basis prescribed by the Commission.

(19) The volume of barge grain traffic to Chicago will be substantially curtailed by the said penalty rate basis prescribed on ex-barge grain. Hitherto, the Commission finds: "The proportionals from Chicago on the ex-barge grain being substantially [sic] the same as on ex-rail and ex-lake grain, the Chicago dealers are able to maintain the Chicago price without discount on grain backed by barge billing and to utilize such grain in their hedging operations." (262 I.C.C. 7, *23*) "Backed by barge billing" refers to the fact that in order to secure the application of the outbound rail proportionals, inbound billing for a like amount and kind of grain must be surrendered to the Inspection Bureau at Chicago. The "proportionals" (reshipping charges) from Chicago on the ex-barge grain are not substantially the same, but exactly the same, as on ex-rail and ex-lake grain, to all Eastern Destinations. The Commission finds: "Under the proportionals approved herein on the ex-barge traffic it may be necessary to accord grain backed by barge billing some discount under the Chicago price, * * *" (262 I.C.C. 7, *29*) (going on "but certainly there is no reason why such discount should be as great as the increases resulting from such proportionals," as to which see finding 18(d) herein.)

(20) The said proposal of the Eastern Railroads to increase the reshipping charges on ex-barge grain from Chicago east (relative to such charges on ex-rail grain)

was made with the avowed purpose of driving inbound barge grain traffic, on the barge-rail route via Chicago, off the water and onto the rails;[25a] the Commission now correctly finds that it would have that effect.[25b] By said order the Commission prescribes an increase in the reshipping charges on ex-barge grain from Chicago east (relative to such charges on ex-rail grain) which differs only in degree from the said proposal of the Eastern Railroads, and would divert barge-rail traffic from the lines of plaintiff barge lines to the competing lines of the Western Railroads that bring grain to Chicago from the same western origins.

(21) The inbound barge rates on grain to Chicago represent an adjustment predicated on the volume of such inbound barge traffic. Decrease of such inbound barge traffic volume would require an increase in the barge rates. The volume of such barge traffic varies inversely with the barge rates. A change of a quarter of a cent in the barge rates affects the volume of such barge traffic. Decrease of the volume of such barge traffic does not proportionately decrease the costs of the barge movement of such traffic by the barge lines.

(22) The Commission finds:

> The present combinations on the barge-rail traffic, being so much lower than the all-rail rates from the same and other origins, have diverted and will continue to divert a substantial portion of the traffic to barge-rail routes via Chicago from the all-rail routes, including those through Indianapolis and other markets. This is due, in part, to the level of the barge rates. However, it is also partly due to the level of the present ex-barge proportionals.[26]

[25a] See finding 26 post, footnote 32.

[25b] 262 I.C.C. 7, 25.

[26] 262 I.C.C. 7, 29.

The fact that the barge-rail combinations from any origin via Chicago to Eastern Destinations are lower than the all-rail charges and combinations on such traffic, is solely due to the level of the inbound barge rates to Chicago; for the amount of outbound rail reshipping charges to all Eastern Destinations is precisely the same on the all-rail and barge-rail traffic. To the less-important Central Territory destinations, the fact that the barge-rail combinations via Chicago are lower than the all-rail rates, is also due to the level of the inbound barge rates; to all Central Territory destinations the amount of the outbound rail charges is precisely the same on all-rail and barge-rail traffic on grain originating in Trans-Mississippi and Northwest territory, and on the whole as high (and usually higher) on the barge-rail traffic on grain originating in Illinois. The statement that the condition above described by the Commission "is partly due to the level of the present ex-barge proportionals," is supported by the record in the sense that the advantage of lower inbound barge rates on barge grain is not extinguished by higher outbound rail charges on that grain, under the equal reshipping charges on ex-barge, ex-rail, and ex-lake grain hitherto in effect. But it affords no rational support for the Commission's order.

(23) The inbound barge rates to Chicago are reasonable, and compensatory to the barge lines.[27] The difference between the barge-rail and all-rail combination rates via Chicago to Eastern Destinations, reflects and preserves the inherent low-cost advantage of water transportation on the barge-rail routes. This is equitable.

[27] The Commission correctly so found. (262 I.C.C. 7, *19*): "The barge rates yield fair returns to the barge carriers, and, for the purpose of this proceeding, may be accepted as reasonable."

(24) The Commission does not find how the inherent low-cost advantage of barge transportation to Chicago would be preserved under its order prescribing said penalty charge on rail transportation of ex-barge grain out of Chicago. Assuming, as the Commission states, that "*If* the rates on the ex-barge traffic are adjusted 'in view of its particular circumstances and under the provisions of the Act designed with reference thereto,' the barge-rail traffic will have a fair opportunity to move in competition with the lake-rail and all-rail traffic, thus preserving the inherent advantage of barge transportation to the adjacent farm community and all others concerned, without any adverse effect on the wartime stabilization program or the effective use of the waterway" (262 I.C.C., *29*) that general hypothetical statement does not constitute a finding of fact that any particular rates (such as those prescribed by the Commission's said order) either will have the effects stated, or are in compliance with the requirements of the Interstate Commerce Act, as amended. Furthermore, so regarded, said statement would conflict with specific facts found by the Commission, a conflict not resolved by any finding of the Commission. (Moreover, if so regarded said statement would lack substantial support in the record.)

(25) The Commission found:

> To trunk-line and New England territories, the ex-barge proportionals are the same as the uniform ex-rail proportionals or specifics. To central territory, the ex-barge rates from the Illinois origins are the same as the northwest proportionals, and from Kansas City the same as the trans-Mississippi proportionals. The barge-rail combinations are not made subject to the above-quoted fourth-section rule and from Illinois are generally far below the local rates from Chicago and also lower than the

local rates from numerous intermediate origins in central territory, constituting numerous and extreme departures from the long-and-short haul provision of section 4 of the Interstate Commerce Act. For example, from Morris, they are lower than the local rates on domestic grain to trunk-line and New England territories from all central territory origins west of a line running south from Amadore, Mich., through Oxford, Mich., just west of Hudson, Mich., then east of the Ohio-Indiana State line south to a point just west of Cincinnati, Ohio. They are also lower than the local rates on export grain from all central territory origins west of a line from Erie, Pa., south through Meadville, thence via Johnsonburg, to Altoona, Pa. The barge-rail rates are far below the all-rail rates from the same and other Illinois origins. This is an inequitable situation giving rise to requests for reductions in the all-rail rates from the Illinois and central territory origins, and it is difficult to see, with such extreme disparities, how such requests could properly be denied. As shown by appendix B, table I, there is a substantial production of corn in central territory. While the farmers therein did not appear at the hearing to show that they were hurt by this situation, such evidence was adduced by others in the same relative position, namely, the associations of private and farmer cooperative elevator companies at numerous rail origins in Illinois. This is what is meant by the statement in the prior report that the present ex-barge proportionals from Chicago jeopardize the all-rail rate structure.[28]

The bare arithmetical rate computations above stated by the Commission are assumed to be correct; it is also true that:

(a) As to grain produced at intermediate locations between Chicago and destinations to the east, the farm producers, marketers and shippers of such grain and products thereof (who are herein collectively called "in-

[28] 262 I.C.C. 7, 20.

termediate shippers"), insofar as they may compete with grain or products thereof moving through Chicago in supplying demands to the east of them, are unaffected in that competition by the transportation or other costs of moving grain to Chicago. The commercial effect of differences in cost, including transportation cost, of getting grain to Chicago, is exhausted when the grain arrives at Chicago, where it takes the Chicago market price. The price with which any intermediate shippers are in such competition is the delivered price at eastern destination—viz., the Chicago market price plus the reshipping rate east from Chicago. Under the Commission's order, barge-rail grain would be subjected to a higher reshipping rate east from Chicago, and would be correspondingly discounted on the Chicago market to put its delivered price at the eastern destination on a competitive parity with all-rail and lake-rail grain (if, after the ex-barge rates prescribed by the Commission became effective, there were any barge-rail grain on the Chicago market at all). The Commission's order would not affect the Chicago market price, nor the reshipping rate east from Chicago, on all-rail and lake-rail grain. The competitive situation of any intermediate shipper as to grain moving via Chicago would not be affected by the Commission's order.

(b) Low-cost water transportation by barge to Chicago, enabling producers of grain west of Chicago to realize a higher price on their grain when it moves by barge to Chicago, gives marketers at Chicago an economic advantage in the accumulation of grain produced west of Chicago over marketers at locations[29] who deal in grain moving all-rail from origins west of Chicago

[29] Including intermediate locations, such as Indianapolis.

to Eastern Destinations; which economic advantage is due to the fact that there is low-cost water transportation by barge to Chicago and is a natural economic advantage from geographic location, which cannot be conferred on marketers or dealers or elevator operators (wherever located) who are dependent on all-rail routes. This natural economic advantage can, however, be wholly or partly destroyed; as, by increasing the cost of outbound rail transportation east from Chicago on grain that has enjoyed the low barge rates into Chicago, thereby decreasing the price advantage realized by the farm producer west of Chicago from the use of barge transportation to Chicago, and enabling marketers dependent on all-rail transportation to accumulate more grain produced west of Chicago for all-rail transportation, to the disadvantage of the producers and the barge lines.

(c) Grain marketers, dealers and elevator operators (interested in accumulating grain) who are dependent on all-rail routes are not in the same relative position as farmers (interested in selling grain) who are dependent on all-rail routes. The fact that some farmers are so located as to have accessible low cost barge transportation and receive, for that reason, a higher price for their grain, does not decrease the price received by farm producers not so located, and dependent on all-rail transporation. Grain marketers, dealers and elevator operators so situated as to have accessible low cost barge-rail transportation have an economic advantage in that they are able to pay a higher price per bushel, and thus accumulate more grain, than those marketers, dealers and elevator operators who are dependent on higher cost all-rail transportation. That advantage of grain

marketers, dealers and elevator operators so situated as to have accessible low cost barge-rail transportation is a natural economic advantage, which cannot be equalized with, or conferred on, others not so situated; but which can be destroyed, as, by increasing the outbound rail charges on grain that has enjoyed low inbound barge rates.

(d) The Commission's finding that the situation is inequitable, as between all-rail shippers, including "intermediate shippers," on the one hand, and barge-rail shippers on the other hand, is unsupported by the record. It is equitable that the low-cost advantage of water transportation on this barge-rail route should be preserved, and reflected at every destination on the barge-rail route. It is not preserved by increasing the transportation charges on the outbound rail leg of the barge-rail route because the inbound barge rates are low.

(e) All that is said by the Commission in its finding quoted in the first paragraph of this Finding of Fact relates to rate equities as between shippers and does not relate to rate equities as between connecting lines. That finding provides no rational support for the Commission's order as directed to the issue under Section 3(4) of the Interstate Commerce Act.

(f) The present equality of reshipping rates from Chicago on ex-barge, ex-rail and ex-lake grain to Eastern Destinations has been part of the grain rate structure for more than a decade.

(g) About $60,000,000 of public funds have been expended by the State of Illinois and the Federal Government in the improvement of the Illinois Waterway,

which is the water link connecting Chicago with the inland river system of the continent.[29a]

(h) The above quoted comparison made by the Commission of a combination of water rates and rail reshipping rates, with local rail rates, is a comparison of unlike entities.[30] At no point on the barge-rail route is there a lower barge-rail combination rate for a shorter than for a longer haul.

(i) The Commission's finding that said situation involves departures from Section 4 of the Interstate Commerce Act does not support its order, in view of the Commission's conclusion that neither the so-called fourth section rule in the tariffs of the eastern railroads, nor the long-and-short haul clause of Section 4 of the Interstate Commerce Act does, or should, govern

---

[29a] "*History of the Illinois Waterways.*—During the period from 1848 to 1908, what was then called the Illinois & Michigan Canal was open to the transportation of grain and other commodities into Chicago. In 1908 the State of Illinois authorized a $20,000,000 bond issue for the improvement of the Illinois Waterways, including a portion of the Illinois River. In 1930 the Federal Government took over the project, and the Waterways were again opened for navigation into Chicago in 1933. Exclusive of the expenditures on the old Illinois & Michigan Canal, it is estimated that the total cost of improvements of the Illinois Waterways for navigation purposes has been $60,000,000. No lock charges are made on the Illinois Waterways. Upon the reopening of these waterways certain individuals, grain merchants, and elevator companies invested large sums in elevator facilities along its course." (246 I.C.C. 353, 354-55)

[30] The local rail rate from Fort Wayne, Indiana, to New York is 30 cents. The transit balance of the reshipping rail rate from Fort Wayne to New York (the difference between the reshipping rates from Chicago to New York and to Fort Wayne) is 11½ cents. Fort Wayne has no water rates, and no reshipping rates.

this barge-rail adjustment, the Commission's finding in respect to this being quoted in the margin:[31]

(26) The proposal to charge a higher rate on ex-barge than on ex-rail or ex-lake grain did not originate with the Commission or with shippers. It was originated by the railroads, for the purpose of driving the inbound traffic to Chicago off the water and onto the rails.[32] It did not include a proposal to increase the ex-lake rates because it was felt that the application to ex-lake grain of the existing reshipping or proportional rates at Chi-

[31] "Under section 6(b)[3] of the Transportation Act of 1940, respondents are not required to increase their present ex-barge proportionals to bring the barge-rail combinations in harmony with fourth-section principles. But this section cannot be construed as precluding respondents from increasing those proportionals to bring the barge-rail combinations more nearly into conformity with section 4. Since section 6(b) of the Transportation Act of 1940 protects the departures in the present adjustment, it follows that it will protect any departures of lesser extent, such as those resulting from the rates approved herein." (262 I.C.C. 7, *30-31*)

[3] This section appears on page 24 of our compilation of the Interstate Commerce Act and related sections of other acts, revised to April 1, 1941, and at 54 Stat. L. 904. The provision of that section referred to reads as follows:

"(b) In the case of a carrier heretofore subject to the provisions of paragraph (1) of section 4 of the Interstate Commerce Act, as amended, no rate, fare, or charge lawfully in effect at the time of the enactment of this Act shall be required to be changed by reason of the amendments made to such paragraph by subsection (a) of this section."

[32] The Eastern Railroads offered only one witness at the hearings who testified at page 90 of the transcript of the testimony taken by the Commission: "We made this proposal, as I have stated several times, and filed these tariffs with the hope that we could drive the business off the water and back on the rails where it belongs." (248 I.C.C. 307, 321)

cago did not take any business away from the Western Railroads.[33] The witness for the Eastern Railroads made no claim at any time that any greater service was rendered or any greater cost incurred in the handling of ex-barge grain at or beyond Chicago than in the handling of ex-rail and ex-lake grain at or beyond Chicago so as to explain, excuse or justify a higher reshipping rate level on ex-barge than on ex-rail and ex-lake grain.

(27) Findings on which the Commission purported to base its conclusion that higher rates on ex-barge grain than on ex-rail and ex-lake grain would not be discriminatory as between connecting carriers read as follows (262 I.C.C. 7, 27-28):

> "Where, as here, ex-rail and ex-lake proportionals or specifics reflect average circumstances and conditions surrounding the all-rail and lake-rail transportation which differ from those affecting the barge-rail transportation, we conclude that ex-barge proportionals may properly vary from the ex-rail and ex-lake proportionals or specifics to the extent warranted by such differences.
>
> "The principal differences as shown by this record and described above may be summarized as follows:
>
> 1. On the average, as compared with the ex-barge grain, the movement under the ex-rail proportionals and specifics requires less terminal service at the gateway or junction, less transit service at intermediate points in official territory and less line-haul service to the southern portion of central territory.
>
> 2. The in-bound rail hauls of all the traffic which engages the ex-rail proportionals are substantially longer, on the average, than the in-bound barge hauls.

[33] Testimony of witness Tannehill for the Eastern Railroads at Page 3660 of the transcript of the testimony taken by the Commission.

3. The rate-making circumstances characteristic of the all-rail traffic, but not of the barge-rail traffic here considered, include:

(a) The ex-rail proportionals or specifics, as parts of the through all-rail rates, provide to each destination on all-rail traffic from west of the gateways an average out-bound factor which is a component part of many through rates of different amounts, which vary with the length of the in-bound hauls and the western factors applicable thereto.

(b) The ex-rail proportionals or specifics (1) are made subject to a fourth-section rule which in effect provides that to trunk-line and New England territories they shall apply only where the in-bound rate is 8.5 cents or higher, and (2) to all official territory destinations are adjusted to equalize the all-rail rates by the various routes and gateways.

(c) The ex-rail proportionals or specifics, combined with the in-bound interstate rates or specifics, result in through all-rail rates to official territory which harmonize with each other and with the local rates in that territory.

4. Lake grain from the Northwest consists chiefly of wheat which has a relatively long water haul in-bound and is usually preceded by an in-bound rail haul. The rail-lake-rail combinations, in general, conform to the principles which underlie section 4. In these respects, lake grain is like barge grain from Kansas City but unlike barge grain from Illinois. To trunk-line and New England territories, the lake-rail grain differs from all of the barge-rail grain moving through Chicago in that the lake-rail grain can and generally does by pass that gateway entirely."

We find:

The findings of the Commission do not disclose any rational relation between such differences, if any, and the

difference in reshipping rate prescribed on ex-barge grain as compared with the established reshipping charges, that remain applicable on ex-rail and ex-lake grain and that have hitherto been applicable on ex-barge grain. Nor does the record before the Commission disclose any such relation.

(28) As to the Commission's said finding that "on the average" there were differences as found by the Commission in paragraph "1" above quoted, between ex-barge and ex-rail grain,[34] we find that:

[34] The Commission elsewhere finds: "The western factors of the through rail rates include not to exceed three transit services without additional charge, and to the extent that the all-rail shipments receive transit on the in-bound movements to the gateways there is less demand on the eastern carriers to perform transit service thereon. This record shows that there is a very substantial volume of domestic grain and grain products moving from points west of the gateways to the East without transit at *the gateways* or points east thereof. That such through movements by rail are substantial is shown by the statistics set forth in appendix B hereto coupled with the fact that official territory consumes as grain or products about 156,000,000 more bushels annually than it produces. Moreover, all-rail grain may be, and frequently is, marketed and processed at Chicago under one transit operation, which avoids the necessity for processing at an intermediate point east thereof. Transit is not available under the in-bound barge rates. Barge-rail grain is marketed but not processed at Chicago. To be processed before final destination it must be transited at some point beyond Chicago. It follows that respondents are called upon to perform more transit service, on the average, on the ex-barge than on the ex-rail traffic." (262 I.C.C. 7, *22*)

Grain processed in transit at Chicago, or west of Chicago, comes to the hands of the Eastern Railroads as grain products, and takes a different rate than the reshipping rate on whole grain. "From the gateways to trunk-line and New England territories, grain products take 0.5 cent over grain, . . ." (262 I.C.C. 7, *14*)

The Eastern Railroads bear no costs of elevation.

(a) Such differences also exist between ex-rail and ex-lake grain.[35] Under the Commission's order the same reshipping rate east from Chicago would prevail on ex-rail and ex-lake grain and a higher reshipping rate on ex-barge grain only. Ex-barge and ex-lake grain via Chicago are in competition to supply eastern demands.

(b) The application by the Eastern Railroads of the present reshipping charges on ex-rail (or ex-lake) grain is not, and, under the Commission's order would not be, contingent upon the amount of terminal or transit service such ex-rail (or ex-lake) grain does or does not receive. Under the tariffs and the order, that portion of the ex-rail (and ex-lake) grain traffic which receives the identical transit and terminal services at Chicago and at transit points east thereof as is received by ex-barge grain will move on the present and lower reshipping rate level.

(c) Assuming the record showed any substantial difference, or any difference whatever, in the costs and services of the Eastern Railroads in handling (a) grain products or grain moving in continuous service through Chicago, on the one hand, and (b) whole grain receiving a transit service and transfer of lading at Chicago, on the other hand, the "averaging" of all ex-rail grain falling in both categories for the purposes of the report and order is the equivalent of according grain falling in the first category a higher reshipping rate level, costs and services considered, and ex-rail grain in the second category a lower reshipping rate level, costs and services considered, than is to be continued with the approval of the Commission on all ex-rail grain; and is the equivalent of according ex-rail grain in

[35] The Commission finds: "Unlike the all-rail traffic, the lake-rail traffic following the water courses moves only over circuitous routes, requires transfer of lading, and requires a full origin and terminal service when it leaves the interchange port. In other words, it never moves in continuous through transportation." (262 I.C.C. 7, *18-19*)

the second category a lower reshipping rate level than would be required thereon by the rate-making principle followed by the Commission in prescribing a reshipping rate level on ex-barge grain.[36] The ex-rail grain in the second category (grain receiving a transit service in connection with temporary storage at Chicago) far exceeds in volume the total volume of ex-barge grain. The so-called "averaging" of all ex-rail grain falling in both categories bears no rational relation to the uniform 3-cent penalty prescribed in the reshipping rate level on ex-barge grain from Chicago to Eastern Destinations.

(d) Ex-rail and ex-barge grain moving through Chicago receives exactly the same line-haul service to the southern part of Central Territory. If it were otherwise, such difference of rail service from Chicago to the southern part of *Central Territory* would have no rational relation to the 3-cent reshipping rate penalty prescribed on ex-barge grain from Chicago *to Eastern Destinations.*

(e) Under the tariffs and the order, the portion of the all-rail grain traffic which moves via Chicago and over the same circuitous routes to the southern portion of Central Territory as ex-barge grain will move on the present reshipping rate level lower than is prescribed for ex-barge grain.

(f) There is no finding which specifies the extent of the differences found to exist, in general terms in paragraphs 1 and 2 above quoted and there is no evidence tending to show the extent of such differences, if any.

(g) The Eastern Railroads obtain the same charges and revenues on ex-rail, ex-lake, and ex-barge grain.

(h) There is no finding (and no evidence) that the Eastern Railroads sustain any substantial

[36] The tremendous volume of grain shipped outbound from Chicago to the east, only a small portion of which can be ex-barge grain since barge-arrived grain constitutes a small fraction of all inbound grain received at Chicago, is shown in Finding No. 8.

differences of cost in their service east from Chicago on ex-rail, ex-lake, and ex-barge grain moving to the same destinations.[37]

In its report of December 1, 1941, the Commission found (248 I.C.C. 307, 311) "* * * in each instance [ex-barge, ex-rail, and ex-lake reshipments] the physical carriage beyond the reshipping point is substantially the same." In its report of February 13, 1945, the Commission found (262 I.C.C. 7, 8 emphasis supplied) "Ex-barge, ex-lake and also ex-rail traffic *except as hereinafter indicated*, are all accorded *the same outbound service*, * * *." The matters "hereinafter indicated" are described in the finding of the Commission first quoted in Finding of Fact number 27 and do not constitute substantial differences in outbound service in respect to ex-barge grain, on the one hand, as compared with ex-lake grain, on the other, or as compared with ex-rail grain from the same origin which receives, as is provided by the tariffs, at and east of Chicago the same transit and terminal services and the same line-haul service as is received by ex-barge grain.

(i) Assuming that substantial quantities of ex-rail grain are processed in transit west of and at Chicago and move east of Chicago as grain products without receiving additional transit services, whereas, all ex-barge grain is processed in transit at points east of Chicago, so that the latter grain receives on the average more transit services east of Chicago when moving on the rates in issue than does the average of all all-rail grain and grain products, it further appears that any transit service received for processing purposes east of Chicago pays a 0.5-cent charge therefor in addition to the reship-

[37] The subject is mentioned, however, in the dissenting opinion of Commissioners Alldredge and Lee: "The eastern railroads have not shown a need for additional revenue or established the existence of any higher costs of consequence, terminal or otherwise, in the transportation of ex-river traffic than those incurred in the handling of ex-rail or ex-lake traffic of the same character." (262 I.C.C. 7, 35)

ping rate.[37a] By reason of this fact, the difference in the average transit service east of Chicago on ex-barge as compared with ex-rail grain is not a difference in circumstances related to the reshipping rates for line-haul service in issue in this cause.

(j) Furthermore, if it were otherwise, and if it be a fact that a substantial volume of grain or grain products moves via all-rail routes from points west of "the gateways" to the East without transit at "the gateways" or points east thereof, the evidence referred to by the Commission in its finding quoted in footnote No. 34 above does not show how much (if any) thereof moves via Chicago, or any rational relation with the penalty imposed on the reshipping rate on ex-barge grain from Chicago to the East.

(29) With respect to the finding of the Commission in said paragraph "2" above quoted that the inbound rail hauls of all of the traffic which engages the ex-rail proportionals are substantially longer "on the average," than the inbound barge hauls, we further find:

(a) Under the Commission's order ex-barge grain and ex-rail grain of like kind coming from an identical origin west of Chicago will always take different reshipping rates from Chicago depending on whether the inbound haul was by barge or rail, the higher rail reshipping charge being assessed on ex-barge grain from such identical origin to all Eastern Territory (and most Central territory) destinations.[38]

[37a] Witness Scott, in describing the total transportation charges on grain from Kansas City to New York City moving via barge to Chicago, thence via rail to Cleveland or Fostoria, Ohio, for processing under transit, and thence as grain products to New York City, stated that such aggregate included 0.5-cents for tranfer (transit) at the Ohio processing point. (pp.3549-3550 of transcript of hearings before the Commission)

[38] Here, and before the Commission, the plaintiffs complain of this (among other things) as discrimination between connecting lines.

(b) The barge lines and the Western Railroads are in competition for the inbound haul only from origins accessible to inland river transportation. The inbound "rail" hauls of "all of the traffic" engaging the reshipping rates include inbound rail hauls from origins not accessible to barge transportation, whose length, when included in such average, renders it irrelevant to and without rational bearing upon said competitive traffic between the barge lines and the Western Railroads, and without rational bearing upon the non-discriminatory relation that should prevail under the Interstate Commerce Act, as amended by the Transportation Act of 1940, with respect to the rail reshipping rates and charges east from Chicago on the traffic of the barge lines and the Western Railroads from identical, water-competitive origins.

(c) The reshipping charges, referred to in said finding of the Commission as "the ex-rail proportionals" are, and for many years have been, also the ex-barge reshipping rates or proportionals.

(d) "To Trunk-line and New England territories the proportionals from Chicago and the other gateways are uniform, regardless of origin"[39] (262 I.C.C. 7, 12) and would so continue as to ex-rail and ex-lake grain under the Commission's order.

(30) The alleged difference in rate-making circumstances found in paragraph "3(a)" above quoted is not truly such, since the ex-barge rates likewise are a component of the many through rates of different amounts, which through rates vary with the lengths of the inbound hauls and the western factors applicable thereto, whether said ex-barge rates are made the same or higher than the ex-rail and ex-lake rates.

(31) As to the difference found by the Commission

[39] Reshipping charges on grain east out of Chicago to Eastern Distinations have been uniform irrespective of origin since February 1, 1910. (262 I.C.C. 7, *12, 14*)

to exist between all-rail and barge-rail transportation in paragraph numbered "3(h)(2)" above quoted,[40] that the "ex-rail" reshipping charges from Chicago to all destinations to the east thereof "are" adjusted to equalize the "all-rail" rates by the various routes and gateways,[41] the Commission's further finding is:

> "Peoria and St. Louis would, of course, be entitled, on reasonable request, to ex-barge proportionals, properly aligned with those approved herein from Chicago, but the record does not contain sufficient detail for the prescription of such proportionals in this proceeding." (262 I.C.C. 7, *32*)

There is no finding (nor evidence) that ex-barge proportionals cannot be prescribed, or voluntarily established by the carriers, via other routes and gateways, equalizing the barge-rail rates via such other routes and gateways, in alignment with the present reshipping charges on ex-barge grain from Chicago. That the process of equalization of the various routes and gateways had reached maturity as to all-rail rates, and remains to be completed as to barge-rail rates, constitutes no intrinsic difference between all-rail and barge-rail transportation as such; it is not rationally related to the Commission's conclusion that the process of alignment

---

[40] As to paragraph "3(b)(1)" above quoted see findings numbered 25(e), (g) and (h) herein above made.

[41] Combination through rate factors on grain from Trans-Mississippi and Northwest territories to and from St. Louis and Peoria produce the same total through rates as to and from Chicago. This result is produced by an adjustment of inbound and outbound rates by rail which vary inversely. Such result is termed "gateway equalization." However, from the Illinois origins from whence moves the preponderance of the barge grain, the only gateway used in constructing combination through rates to the east is Chicago, and no other gateway-market is "equalized" therewith under the all-rail adjustment.

of the ex-barge rates via other routes and gateways should go forward, as the Commission proposes, on the basis of a penalty rate from Chicago on ex-barge grain as against ex-rail grain, thus extending the penalty basis prescribed to barge traffic via other routes and gateways.

(32) As to the alleged difference found by the Commission to exist between barge-rail and all-rail grain traffic in paragraph "3(c)", above quoted, there is no finding by the Commission (and no evidence in the record) to show that combination through barge-rail rates based on ex-barge reshipping or proportional rates made the same as the ex-lake and ex-rail reshipping or proportional rates, would fail to harmonize with each other and with the local rates in that territory. Such rates would "harmonize" in every sense that the combinations resulting from the rates prescribed by the Commission harmonize. However, barge-rail rates based on inbound water rate factors sufficiently low to reflect the inherent advantages of low cost water competition are necessarily in "disharmony" with all-rail rates based on inbound rate factors reflecting the higher costs of rail service. Such disharmony must exist unless barge-rail combination through rates are made as high as the all-rail combination through rates. They can be made as high in two ways: By increasing the inbound barge factor to equal the inbound rail factor or by increasing the outbound rail factor on the ex-barge traffic by an amount sufficient to offset the difference between the respective inbound rates by barge and by rail. The practical commercial effect of the Commission's order is the same as if it had required a 3-cent increase in the inbound rates by barge in the face of its finding that said barge rates are reasonable and compensatory.

(33) As to the finding of the Commission in paragraph "4" above quoted, we refer to findings hereinabove made, and further find:

(a) The said finding of the Commission does not recite any difference in transportation circumstances and conditions as between ex-lake grain, on the one hand, and ex-barge grain from Kansas City, but, on the contrary finds that such conditions are similar.

(b) Substantial quantities of wheat come to Chicago ex-barge, from Illinois origins. It is also true that over a period of almost four years more wheat came to Chicago by barge from all origins than by lake. (262 I.C.C. 7, *41*) [42]

(34) The reshipping rate level to be continued on ex-rail and ex-lake grain is not contingent on the length of the inbound haul to Chicago; is not contingent on whether the grain moves in continuous service via Chicago or some other gateway or is temporarily stored in Chicago prior to reshipment; is not contingent on the amount of the terminal or interchange service performed by Eastern Railroads in Chicago or other junction points on the shipment or reshipment of the grain; is not contingent on the amount of transit service received by the grain at intermediate points in connection with either the inbound hauls to Chicago or the outbound hauls therefrom; and is not contingent on the

---

[42] *Wheat Received at Chicago* (in thousands of bushels)

Year	By Lake	By Barge
1940	2,636	2,773
1941	1,404	1,695
1942	863	550
1943 (first 10 months)		31
Totals	4,903	5,049

amount or circuity of the line-haul service on the routes to, via, or from Chicago to ultimate destination. Stated differently, said reshipping rate level is held out by the tariffs of Eastern Railroads and applied to all ex-rail and ex-lake grain reshipped at Chicago; this includes grain which moves inbound for both short and long distances; and includes grain which moves through Chicago or other gateway or junction points in continuous service and grain which is temporarily stored at Chicago and there transferred from car, boat, or barge to an elevator and then from elevator to car; and includes grain which received substantial transit services at intermediate points east of Chicago, as well as grain which receives no such transit service; and includes grain which moves over direct routes, as well as grain which moves over circuitous routes.

(35) Other findings in the report and order of the Commission disclose that the relative amount of terminal and transit service at the gateways or junctions, the relative amount of transit service at intermediate points in Official territory, the relative amount of line-haul service performed by the Eastern Railroads and the relative lengths of the inbound hauls do not constitute rate-making considerations observed in the establishment and maintenance of the ex-rail and ex-lake rates. Such findings read as follows:

> "The service under the inbound rail rates to the gateways includes switching to the train at origin, the privilege of intermediate transit stops, not exceeding three, and terminal service at the gateway. The through rates apply whether the traffic moves in continuous through transportation in which case interchange is the only service performed at the junction, or under the governing transit provisions where it is stopped at the gateway or other intermediate point for marketing or

processing. In the latter event, the outbound service generally consists of concentrated movements in large lots of several cars at a time out of terminal elevators." (206 I.C.C. 7, *14*)

"The all-rail adjustment by providing for proportionals or outbound balances from the gateways, fixed so far as practicable at a uniform figure regardless of origin, gives the merchants and processors at such points the benefits of transit and at the same time assist them in maintaining a common price, thus facilitating hedging and other market operations. The all-rail traffic consists of all kinds of grain and grain products moving for all distances, long and short, over both direct and circuitous routes, in both continuous through transportation and where stopped in transit at the gateways or other intermediate points." (206 I.C.C. 7, *17*)

"Unlike the all-rail traffic, the lake-rail traffic following the water course moves only over circuitous routes, requires transfer of lading, and requires a full origin terminal service when it leaves the interchange port. In other words, it never moves in continuous through transportation. The inbound lake movement consists chiefly of wheat moving for relatively long distances." (206 I.C.C. 7, 17-18)

36. The Commission found: "As to the ex-lake rates from Chicago, that these do not adversely affect those interested in the barge-rail traffic via Chicago is shown by the fact that if such ex-lake rates were increased, lake grain from the Northwest would continue to flow to the Lake Erie and Hudson River ports, and those interested in the barge-rail traffic via Chicago would be no better off than before." (262 I.C.C. 7, *29*) Granting that ex-lake grain, if subjected to the same penalty basis of rail reshipping rates east of Chicago as prescribed by the Commission on ex-barge grain, would be diverted via lake from Chicago to Lake Erie

and Hudson River ports insofar as the same is for the supply of eastern dealers and processors located at eastern destinations (east of Buffalo), the Commission also finds that there is a movement of ex-lake grain from Chicago to dealers and processors in Central Territory (west of Buffalo) for transit there into Eastern Territory under the present parity of reshipping rates;[43] and large areas of Central Territory geographically cannot be served in such transit via lake through Lake Erie and Hudson River ports, but can be and are served with ex-lake grain through Chicago. The only route by which ex-lake grain can be shipped to dealers and processors in Central Territory as aforesaid in competition with ex-barge grain is via Chicago.

(37) The portion of the said order of February 13, 1945, herein complained of which prescribes higher rail reshipping charges on ex-barge than on ex-rail and ex-lake grain east from Chicago, is not supported by the findings of the Commission. The Commission considers matters to warrant said portion of said order that do not warrant it, and that have no rational relation to the conclusion that such ex-barge reshipping rates could lawfully be those, higher than such ex-rail and ex-lake reshipping rates, prescribed by the Commission, under the rules and standards prescribed by the Interstate Commerce Act as amended in 1940. The Commission seeks to support said portion of said order by findings that are unsupported by the record.

---

[43] 262 I.C.C. 7, *18*. See also footnote 8, *supra*, and testimony of Witness Tannehill for the Eastern Railroads at page 92 of the record before the Commission. Between 1933 and November 1, 1943, there were received at Chicago by lake 45,590,000 bushels of grain; by barge, 102,633,000 bushels; by rail, 1,485,655,000 bushels. (246 I.C.C. on *383*; 272 I.C.C. 1, on *41*) (These figures are confined to corn, wheat, oats and soybeans; other kinds of grain moving in less volume are not included.)

Upon the above and foregoing Findings of Fact, the court states the following:

Conclusions of Law.

I.

The portion of the order of February 13, 1945, of the Interstate Commerce Commission which prescribes higher rail reshipping charges east from Chicago on ex-barge grain than on ex-rail and ex-lake grain, is of a character which this court has jurisdiction to enjoin and set aside, and this Court has jurisdiction over the subject matter of said suits.

II.

Plaintiffs in the above-entitled causes have an interest and standing which entitles them to bring and maintain these suits.

III.

The portion of the said order of February 13, 1945, herein complained of which prescribes higher rail reshipping charges on ex-barge than on ex-rail and ex-lake grain east from Chicago, is not supported by the findings of the Commission.

IV.

Findings made by the Commission in support thereof are not supported by the record in respects stated in the foregoing Findings of Fact.

V.

The Commission considers matters to warrant said portion of said order that do not warrant it, and that have no rational relation to the conclusion that such ex-barge rail reshipping charges could lawfully be higher than such ex-rail and ex-lake rail reshipping charges as prescribed by the Commission, under the rules and standards prescribed by the Interstate Commerce Act as amended in 1940.

VI.

The Interstate Commerce Commission is without authority directly or indirectly to adjust any rates for the purpose of equalizing the economic advantage of those who are so located as to enjoy low-cost water transportation with the situation of others who by reason of their different location do not enjoy that economic advantage, notwithstanding the Interstate Commerce Commission's own opinion may be that the existence and enjoyment of such natural economic advantage is an inequitable situation.

VII.

Transportation circumstances and conditions involved in and pertaining to transportation by rail from points not accessible to and served by inbound water transportation to points east of Chicago were not material or relevant to the decision of the questions before the Commission; those circumstances and conditions have no rational bearing on the questions for decision which were in issue before the Commission; and the Commission erred in considering such circumstances and conditions in the averages referred to by it in its finding quoted in Finding of Fact No. 27, above.

VIII.

In adjusting rail rates or charges on traffic moving via the connecting lines of common carriers who are regulated under the Interstate Commerce Act, whether such connecting carriers are water or rail carriers, and as between the traffic of such connecting water carriers on the one hand and the traffic of such connecting rail carriers on the other hand, the Interstate Commerce Commission is bound to observe the requirements of Section 3(4) of Part I of the Interstate Commerce Act as amended by the Transportation Act of 1940, and failed so to do.

IX.

The Commission is without authority to remove any inequity found by it to exist by authorizing a rate discrimination between connecting lines.

X.

Departures from, or violations of, the long-and-short haul provision of Section 4 of the Interstate Commerce Act, or the principles of that Section, cannot lawfully be cured by means which would violate Section 2 or Section 3(4) of said Act.

XI.

The Interstate Commerce Commission, in adjusting rail rates or charges on traffic moving via the connecting lines of common carriers who are regulated under the Interstate Commerce Act, under the requirements of Section 4(1) of the Interstate Commerce Act, as amended by the Transportation Act of 1940 (and particularly Section 6(a)(1) and 6(b) thereof) is not at

liberty to deny or qualify the requirements of Section 3(4) of the Interstate Commerce Act, as amended by the Transportation Act of 1940.

XII.

The National Transportation Policy enacted by the Transportation Act of 1940 is not precatory, but is mandatory.

XIII.

A principal inherent advantage of water transportation is that it is carried on at low cost, and it is the intent of the Interstate Commerce Act as amended in 1940 to include the same among the inherent advantages of all modes of transportation subject to the provisions of the Interstate Commerce Act, and that the Interstate Commerce Commission shall administer all sections of said Act, so as to develop, co-ordinate and preserve a national transportation system by water, highway and rail, as well as other means, adequate to meet the needs of the commerce of the United States, which system incorporates and preserves said inherent low-cost advantage of water transportation."

XIV.

The portion of said order of February 13, 1945, which authorizes prescribed higher rail reshipping rates or charges east from Chicago on ex-barge grain than on ex-rail grain is invalid, and should be enjoined as prayed in the complaints.

.....

.....

.....

[46] 81 Cong. Rec. p. 6127.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

A. L. Mechling, doing business under The trade name and style of A. L. Mechling Barge Line, *Plaintiff*, vs. United States of America, *Defendant*, and Interstate Commerce Commission, *Intervening Defendant*.	Consolidated Case No. 45 C 865 Civil Action File No. 45 C 865
Inland Waterways Corporation, *Plaintiff*, vs. United States of America and Interstate Commerce Commission, *Defendants*.	Civil Action File No. 45 C 866
The Secretary of Agriculture of the United States and the War Food Administrator, *Plaintiffs*, vs. United States of America, *Defendant*, and Interstate Commerce Commission, *Intervening Defendant*.	Civil Action File No. 45 C 1020

ORDER.

These consolidated causes coming on further to be heard upon the motion of the plaintiffs for a decree, and it appearing that:

(a) The court has entered herein certain Findings of Fact and Conclusions of Law;

(b) The Interstate Commerce Commission in the proceeding before it there known as "Investigation and Suspension Docket 4718, Grain Proportionals, Ex-Barge to Official Territory" referred to in said Findings of Fact entered on February 13, 1945, a certain order, a part of which should be enjoined as stated in said Conclusions of Law.

(c) Thereafter on October 4, 1945, this court entered herein its temporary injunction temporarily restraining such portion of said certain order entered on February 13, 1945, whereupon on the same day the Interstate Commerce Commission entered its further order in the same proceeding before it suspending until May 5, 1946, (unless otherwise ordered by the Commission) the operation of certain tariffs filed in conformity with said portion of said order of February 13, 1945, and especially Supplement 133 to Agent B. T. Jones' I.C.C. No. 3356 and Supplement 27 to Agent B. T. Jones' I.C.C. No. 3363.

Now, Therefore, It Is Ordered, Adjudged and Decreed by the court that:

1. Said order of the Interstate Commerce Commission of February 13, 1945, referred to in the pleadings herein, and entered by the Commission in the proceeding before it known as "Investigation and Suspension Docket 4718, Grain Proportionals, Ex-Barge to Official Territory," and the operation and effect of said last mentioned order of the Commission insofar as the same either

(a) Prescribes, approves, authorizes or countenances in any manner whatever a charge for railroad services in transporting east from Chicago grain that has

arrived thereby barge that is higher than any rate or charge that is contemporaneously exacted in any form or under any guise for railroad services which do not appear from legally relevant findings of the Commission supported by evidence to be substantially different from railroad services in transporting east from Chicago like ex-rail grain from like origins west of Chicago; or

(b) Prescribes, approves, authorizes or countenances in any manner whatever a rate or charge for transporting ex-barge grain east from Chicago that, on account of alleged differences in conditions and circumstances surrounding the transportation of ex-barge and ex-rail grain, is higher on the ex-barge grain than any rate or charge contemporaneously exacted in any form or under any guise for the rail transportation east from Chicago of like ex-rail grain, or like ex-lake grain, so long as such relative differences also exist between transportation of like ex-rail and ex-lake grain without being reflected in the rail rates or charges for transportation east from Chicago of like ex-rail and ex-lake grain.

be and it is hereby enjoined.

2. And the Interstate Commerce Commission is hereby restrained and enjoined from taking any action or step whose effect, direct or indirect, would be to sanction, establish or permit to become effective any rail rates or charges for the transportation of ex-barge grain from Chicago to points lying to the east thereof that are higher than rail rates or charges that are or may be contemporaneously exacted for that service on like ex-rail or ex-lake grain, that are in any way predicated upon the purported authority of the said void

portion of the order of the Interstate Commerce Commission of February 13, 1945.

3. This cause is hereby remanded to the Interstate Commerce Commission for further proceedings disposing of said proceeding known as "Investigation and Suspension Docket 4718, Grain Proportionals, Ex-Barge to Official Territory," in conformity with the Findings and Conclusions of this court.

.....
Circuit Judge

.....
District Judge

.....
District Judge